Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	EB Docket No. 07-197
	)	
Kurtis J. Kintzel, Keanan Kintzel, and all Entities by which they do business before the Federal Communications Commission	)	File No. EB-06-IH-5037
	)	
Resellers of Telecommunications Services	)	

REPLY OF THE KINTZELS, ET AL., TO THE ENFORCEMENT BUREAU'S OPPOSITION TO THE MOTION TO MODIFY THE ISSUES, OR, IN THE ALTERNATIVE, STATEMENT OF OBJECTIONS TO THE ORDER TO SHOW CAUSE

Kurtis J. Kintzel, Keanan Kintzel, and all Entities by which they do business before the Federal Communications Commission ("the Kintzels, et al.") hereby submit this Reply brief. The Bureau's insistence that the Motion of the Kintzels, et al., to Modify the Issues (hereinafter, "Motion to Modify") contains procedural defects, and insistence that Kurtis J. and Keanan Kintzel would be denied the opportunity to defend themselves if they were not individually named as parties in the Order to Show Cause, are both meritless contentions, rife with logical fallacies, and should be summarily denied.

I. The contention that the Motion to Modify contains procedural defects is incorrect and utterly lacking in merit.

The Enforcement Bureau's Opposition makes the untenable assertion that the Motion to Modify is not actually a motion to modify under 47 C.F.R. § 1.229, but rather a Petition for

Reconsideration under 47 C.F.R. § 1.106(a)(1). Opposition, p. 2. The Enforcement Bureau makes that assertion—not the Kintzels, et al. Never once in the Motion to Modify is "Petition for Reconsideration" mentioned. Although the Enforcement Bureau makes the assertion in the first place, the Enforcement Bureau then proceeds to argue against granting such a Petition for Reconsideration as if the Kintzels, et al., had asked for such relief. Opp., p. 3. This is an example of the "straw man" logical fallacy ("a weak or imaginary opposition (as an argument or adversary) set up only to be easily confuted"[1]). The Bureau attacks the straw man it has set up (the "Petition for Reconsideration" that the Kintzels, et al., never asked for), and vehemently argues that it should not be granted. Opp., p. 3-4.

The Opposition also asserts that the Motion to Modify should be dismissed because Chief ALJ Richard L. Sippel is empowered to act on motions to modify under 47 C.F.R. § 1.229, not the Commission. Opp., p. 2. That is another straw man argument, because the Kintzels, et al., never asked the Commission to rule on the Motion to Modify in contravention of the Chief ALJ's authority. In the Motion to Modify, verbiage such as, "the Kintzels, et al., request that the Commission ...." appears several times; yet these are all references to modifications of the issues that the Commission is requested to make, if the Chief ALJ so orders.

For example, the Motion to Modify asks, "The Kintzels, et al., reiterate their request that the Commission identify the authority upon which the imposition of fines is based, for each alleged violation. The Kintzels, et al., also request that the Commission demonstrate that there is any combination of single violations or continuing violations in which fines that exceed $50 million fall within statutory limits." Mot. to Modify, p. 3-4. In the foregoing excerpt, the Kintzels, et al., are requesting that, upon issuance of an Order from the Chief ALJ directing the Commission to so modify the issues, the Commission would identify such authority and

[1] Merriam-Webster Online Dictionary, at http:www.merriam-webster.com/dictionary/straw%20man.

demonstrate such combinations as requested in the foregoing excerpt. However, it is reasonably understood that the Order directing the Commission to do so would issue from the Chief ALJ.

The Enforcement Bureau misconstrues such requests directed toward "the Commission" as seeking a ruling from the full Commission on modification of the issues, in contravention of the Chief ALJ's authority. However in the foregoing excerpt, the Kintzels, et al., are merely describing the content of the modifications requested from the Commission, but seeking the actual ruling from the Chief ALJ on whether or not the Commission will be required to make such modifications.

In another section of the Motion to Modify, the following verbiage appears: "The Kintzels, et al., respectfully request that the foregoing Motion ... to Modify ... be considered on the merits by the Commission." Mot. to Modify, p. 20. In that sentence, "the Commission" refers to the "court" in which the ALJ sits, since it is not common parlance to direct requests to individual judges in legal pleadings. For example, the Order dated September 11, 2007, designating the presiding officer in the instant proceeding as Chief ALJ Richard L. Sippel, is signed by "FEDERAL COMMUNICATIONS COMMISSION/Richard L. Sippel, Chief Administrative Law Judge."[2] It is clear that in the instant proceeding, the FCC has delegated its authority to make a decision at the hearing level to the Chief ALJ. The Chief ALJ is empowered to make decisions at the hearing level that carry the force of FCC authority. The full Commission is available as an appeal body. *See, e.g.*, 47 C.F.R. § 1.276. It is reasonably understood that, in the foregoing excerpt from the Motion to Modify, "the Commission" refers to the "court" or "authority" on whose behalf the Chief ALJ is empowered to render rulings at the hearing level.

Further evidence that the full Commission has not been requested to rule on the Motion

[2] Order, September 11, 2007, FCC 07M-32.

in contravention of the Chief ALJ's authority is the following: The Motion to Modify was filed with the FCC Secretary, with an original and 6 copies, as is required of all cases designated for hearing by an ALJ.[3] Further, the Motion to Modify was filed with an explanatory letter to the FCC Secretary, referencing the Docket Number and File Number of the instant proceeding. The instant proceeding was assigned to Chief ALJ Richard L. Sippel on September 11, 2007,[4] and notice of the designation for hearing was published in the *Federal Register* on September 27, 2007.[5] A courtesy copy of the Motion to Modify was faxed to the Office of Administrative Law Judges, per the September 11, 2007 Order.[6] In view of the foregoing, it is unreasonable to suggest that the term "the Commission" in the Motion to Modify refers to the full Commission, as an adjudicative body. It is also unreasonable to read the Motion to Modify as requesting any rulings by "the Commission" for which the authority to render such rulings has not been delegated to the Chief ALJ.

The Enforcement Bureau's Opposition suggests that there is no choice but (1) to dismiss the Motion to Modify because it purportedly seeks a ruling from the full Commission on motions to modify under § 1.229 in contravention of the Chief ALJ's authority, or (2) to refer the pleading to the full Commission as a Petition for Reconsideration under § 1.106(a)(1). Opp., p. 2-3. The Kintzels, et al., never asked for either form of relief. The Bureau's Opposition merely asserts that the Kintzels, et al., have asked for such relief, so that it can energetically knock down those two straw men. The Bureau suggests that the Motion to Modify must be either dismissed or recast as a Petition for Reconsideration. That implicates another logical fallacy—the false choice. The Bureau's requests should be summarily discarded as utterly lacking in merit.

[3] "Guidelines for Filing Paper Documents," at http://www.fcc.gov/osec/guidelines.html.
[4] Order, September 11, 2007, FCC 07M-32.
[5] 72 Fed. Reg. 54911-54913.
[6] Order, September 11, 2007, FCC 07M-32 (requesting that "Courtesy copies of Notices of Appearances, Pleadings and Motions that do not exceed twenty (20) pages in length are to be faxed on the date of service to the Office of Administrative Law Judges).

II. Removing the individual liability of Kurtis J. and Keanan Kintzel would not deny them the opportunity to be heard; it would deny them the ordeal of being tried.

The Opposition contains a baffling argument about the purported harm that would result to Kurtis J. and Keanan Kintzel should individual liability be removed from the Order to Show Cause. The argument is constructed upon the meritless "Petition for Reconsideration" that was never asked for. The argument suggests that, since a Petition for Reconsideration will only be considered as it "relates to an adverse ruling with respect to the petitioner's participation in the proceeding," 47 C.F.R. § 1.106(a)(1), removing the individual liability of Kurtis J. and Keanan Kintzel would deny them the opportunity to appear as parties to argue that their operating authority as interstate carriers should not be revoked. Opp., p. 3.

Clearly, the request to remove Kurtis J. and Keanan Kintzel as individual defendants encompasses removing them as individual defendants on the issue of revocation of operating authority, as well. They would not need an "opportunity" to defend on that issue, because they would not be potentially liable on that issue. Furthermore, if Kurtis J. and Keanan Kintzel were not individually named in the Order to Show Cause, they could still appear at the hearing on behalf of their companies, but since not named as individual defendants, their personal assets would not be subject to forfeiture in the amount of $50 million.

The limited liability afforded to shareholders of corporations through the "corporate veil" has been called "the most important legal development of the 19th Century." *Labadie Coal Co. v. Black*, 672 F.2d 92, 96 n.16 (D.C. Cir. 1982). Without the limited liability protection of corporations, industrialization would not exist, because the risk of individual liability would be too great for anyone to build a business. *See id.*, at 96-97. Corporate entities are afforded a high

level of judicial deference for that reason, and the veil will be pierced only in cases of fraud or injustice. *See Dole Food Co. v. Patrickson*, 538 U.S. 468, 475 (2003); *see Labadie, supra*, at 99.

The Order to Show Cause fails to allege any instances of fraud or injustice that would justify veil-piercing under existing law. Furthermore, Kurtis J. and Keanan Kintzel need not be named as parties in order to present evidence at the hearing, since they could appear on behalf of their companies. In addition, under 47 C.F.R. § 1.225(b), "[n]o person shall be precluded from giving any relevant, material, and competent testimony at a hearing because he lacks a sufficient interest to justify his intervention as a party in the matter."

The Bureau's contention that Kurtis J. and Keanan Kintzel must be named individually as parties in order to present arguments on the issue of revocation of operating authority are without basis in the case law or Commission regulations. The Bureau's Opposition also completely sidesteps the issue of case law dating from the 19th Century on the limited liability protection afforded to corporations, and high legal standard required for veil-piercing. The Bureau's arguments are irrelevant and should be summarily disregarded.

III. Conclusion

For the foregoing reasons, the Bureau's requests should be denied, and the motions to modify under § 1.229, described in the Motion to Modify, should be granted. The Kintzels, et al., further reserve the right to reply to later Opposition pleadings that may be filed by the Bureau.

Catherine Park

Catherine Park (DC Bar # 492812)
The Law Office of Catherine Park

2300 M Street, NW, Suite 800
Washington, D.C. 20037
Phone: (202) 973-6479
Fax: (866) 747-7566
Email: contact@cparklaw.com

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing REPLY OF THE KINTZELS, ET AL., TO THE ENFORCEMENT BUREAU'S OPPOSITION, ETC. was sent for filing on this 3rd day of November 2007, by U.S. Mail, First Class, on the following:

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

And served by U.S. Mail, First Class, on the following:

Hillary DeNigro, Chief
Michele Levy Berlove, Attorney
Investigations & Hearings Division, Enforcement Bureau
Federal Communications Commission
445 12th Street, SW
Room 4-C330
Washington, D.C. 20554

Catherine Park

Catherine Park